

Introduced by Senator Aanestad

February 22, 2005

An act to add Section 1714.4 to the Civil Code, relating to liability.

LEGISLATIVE COUNSEL'S DIGEST

SB 937, as amended, Aanestad. Liability: obesity.

Existing law provides that a manufacturer or seller is not liable in a product liability action if the product is a common consumer product intended for personal consumption and it is inherently unsafe and is known to be unsafe by the ordinary consumer who consumes the product with the ordinary knowledge common to the community, except as specified.

This bill would provide that a manufacturer, distributor, *packer, carrier, holder, marketer, advertiser*, or seller of food or nonalcoholic beverages intended for human consumption shall not be subject to ~~civil liability for personal injury or wrongful death based on an individual's consumption of that food or nonalcoholic beverages if liability is premised upon the individual's~~ *any civil action, as defined, arising out of weight gain, obesity, or a health condition related to associated with weight gain or obesity and resulting from his or her or any other generally known health condition allegedly caused by or allegedly likely to result from the long-term consumption, as defined,* of food or nonalcoholic beverage *that results in weight gain or obesity and* that is in compliance with applicable statutory and regulatory requirements, ~~except as specified. The bill would exempt certain actions from this provision and would require persons filing those actions to comply with specified procedural requirements.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1714.4 is added to the Civil Code, to~~
2 ~~read:~~
3 *SECTION 1. Section 1714.4 is added to the Civil Code, to*
4 *read:*
5 1714.4. (a) No manufacturer, distributor, packer, carrier,
6 holder, marketer, advertiser, or seller of food or nonalcoholic
7 beverages used for human consumption, or any association of
8 one or more of those entities, shall be subject to any civil action
9 arising out of weight gain, obesity, a health condition associated
10 with weight gain or obesity, or any other generally known health
11 condition allegedly caused by or allegedly likely to result from
12 the long-term consumption of food or nonalcoholic beverage that
13 results in weight gain or obesity.
14 (b) For purposes of this section, the term “long-term
15 consumption” means the cumulative effect of the consumption of
16 food or nonalcoholic beverages, and not the effect of a single
17 instance of consumption. A “civil action” means any action filed
18 by or on behalf of a natural person, as well as any derivative or
19 other action arising therefrom asserted by or on behalf of any
20 individual, corporation, company, association, firm, partnership,
21 society, joint-stock company, or any other entity, including any
22 governmental entity or private attorney general.
23 (c) This section does not apply to any of the following:
24 (1) An action based on a material violation of statutes or
25 regulations regarding the manufacturing, marketing,
26 distribution, advertisement, labeling, or sale of the food, if the
27 violation was knowing and willful and a proximate cause of the
28 claim of injury relied upon by the claimant and resulting in a
29 person’s weight gain, obesity, or health condition associated
30 with weight gain or obesity.
31 (2) An action for breach of contract or express warranty relied
32 upon by the claimant in connection with the purchase of food or
33 nonalcoholic beverages, if the breach was a proximate cause of
34 injury relied upon by the claimant and related to a person’s

1 weight gain, obesity, or health condition associated with a
2 person's weight gain or obesity.

3 (3) An action regarding the sale of food or nonalcoholic
4 beverages that are adulterated as described in Section 402 of the
5 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 342), and
6 the claimed injury was proximately caused by that violation,
7 provided that nothing in this paragraph shall be construed to
8 create new, or expand existing, private rights, if any, under the
9 adulteration or misbranding statutes or regulations, nor shall
10 this paragraph be construed to interfere with any agency's
11 exclusive or primary jurisdiction to find or declare violations of
12 these statutes or regulations.

13 (4) In any action filed pursuant to this subdivision, all of the
14 following requirements shall be met:

15 (A) The complaint initiating the action shall state with
16 particularity all of the following or the court shall dismiss the
17 action:

18 (i) The statute, regulation, or other law that was allegedly
19 violated.

20 (ii) The facts that are alleged to constitute a material violation
21 of the statute or regulation.

22 (iii) The facts alleged to demonstrate that the violation
23 proximately caused actual injury to the plaintiff.

24 (B) The complaint initiating the action shall state with
25 particularity facts sufficient to support a reasonable inference
26 that the violation was committed with intent to deceive or injure
27 consumers or with the actual knowledge that the violation was
28 injurious to consumers.

29 (C) All discovery and other proceedings shall be stayed during
30 the pendency of any motion to dismiss, unless the court finds
31 upon the motion of any party that particularized discovery is
32 necessary to preserve evidence or to prevent undue prejudice to
33 that party. During the pendency of any stay of discovery pursuant
34 to this subparagraph, unless otherwise ordered by the court, any
35 party to the action with actual notice of the allegations contained
36 in the complaint shall treat all documents, data compilations,
37 including electronically recorded or stored data, and tangible
38 objects that are in the custody or control of the party and that are
39 relevant to the allegations as if they were the subject of a

1 continuing request for production of documents from an
2 opposing party under the Code of Civil Procedure.

3 (d) The provisions of this section shall apply to all covered
4 claims filed on or after the effective date of this section,
5 regardless of when the claim arose.

6 ~~1714.4. (a) No manufacturer, distributor, or seller of food or~~
7 ~~nonalcoholic beverages intended for human consumption shall be~~
8 ~~subject to civil liability for personal injury or wrongful death~~
9 ~~based on an individual's consumption of that food or those~~
10 ~~nonalcoholic beverages if liability is premised upon the~~
11 ~~individual's weight gain, obesity, or a health condition related to~~
12 ~~weight gain or obesity and resulting from his or her long-term~~
13 ~~consumption of that food or nonalcoholic beverage if the food or~~
14 ~~beverage is in compliance with applicable statutory and~~
15 ~~regulatory requirements.~~

16 ~~(b) For purposes of this section, the term "long-term~~
17 ~~consumption" means the cumulative effect of the consumption of~~
18 ~~food or nonalcoholic beverages, and not the effect of a single~~
19 ~~instance of consumption.~~

20 ~~(c) This section does not apply to any of the following:~~

21 ~~(1) An action in which a manufacturer or seller of food or~~
22 ~~nonalcoholic beverages violated statutes or regulations regarding~~
23 ~~the manufacturing, marketing, distribution, advertisement,~~
24 ~~labeling, or sale of the product, and the violation was a proximate~~
25 ~~cause of the claim of injury resulting from a person's weight~~
26 ~~gain, obesity, or health condition related to weight gain or~~
27 ~~obesity.~~

28 ~~(2) An action for breach of contract or express warranty in~~
29 ~~connection with the purchase of food or nonalcoholic beverages.~~

30 ~~(3) An action regarding the sale of food or nonalcoholic~~
31 ~~beverages that are adulterated as described in Section 402 of the~~
32 ~~Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 342).~~